

2-43. Section 404 Dredged and Fill Material Permitting (1200 TN 396 2-43)**1. AUTHORITY.**

- a. To approve grants pursuant to Section 104(b)(3) of the *Clean Water Act* for research, investigations, experiments, training, demonstrations, surveys and studies related to development of wetlands protection programs, including those programs to issue permits for disposal of dredged or fill material (Section 404(g));
- b. To review, comment on and/or object to applications for state permits in a state with an approved assumed Section 404 permit program (Section 404(j));
- c. To approve or deny state program submissions (Section 404(h));
- d. To approve or deny revisions to approved state programs (Section 404(h));
- e. To review and comment on U.S. Army Corps of Engineers Section 404 public notices (Section 404(q)), including but not limited to letters identified in Parts II and IV in the *Clean Water Act Section 404(q) Memorandum of Agreement between the Environmental Protection Agency and the Department of the Army*, dated August 1992 (404(q) MOA);
- f. To initiate Elevation of Policy Issues as described in Paragraph III.2 of the 404(q) MOA and to notify the Assistant Administrator, Office of Water of issues as described in Paragraph III.4 of the 404(q) MOA;
- g. To restrict or prohibit designation of disposal sites (Section 404(c));
- h. To request review by the Assistant Secretary of the Army of proposed permit decisions;
- i. To approve regional designations, including changes, of special cases and special 404(f) matters (Memorandum of Agreement with Department of the Army); and
- j. To make final determinations of applicability of Section 404(f) (MOA).

2. TO WHOM DELEGATED.

- a. The authorities in paragraph 1.a. are delegated to the Director, Water Division (WD).
- b. The authority under 1.b. to issue an "A" letter is delegated to the Chief, Wetlands Branch, WD.
- c. The authority under 1.b. to issue a "B" letter removing an outstanding federal objection is delegated to the Director, WD.
- d. The authority in paragraph 1.e. to issue the letter described in Paragraph IV.3(b) of the 404(q) MOA is delegated to the Director, WD.
- e. The authority to initiate a policy elevation as described in Paragraph 1.f is delegated to the Director, WD.
- f. The authorities in paragraph 1.e. to issue letters as described in Part II and Paragraph IV.3(a) of the 404(q) MOA and the authorities in Paragraph 1.j. are delegated to the Director, WD; and Chief, Wetlands Branch, WD.

2-43. Section 404 Dredged and Fill Material Permitting (continued)**3. LIMITATIONS.**

- a. Regional administrators may exercise the authority under paragraph 1.a. for research, investigations, experiments, training, demonstrations, surveys and studies having regional applicability (e.g. development of public education materials for a particular state wetlands protection program, development of wetlands evaluation techniques designed for a specific wetland type found in one region).
- b. Regional administrators are delegated authority under paragraph 1.b. to transmit the consolidated federal comment on a state permit application in an approved, assumed state program. This initial comment letter transmitting the consolidated federal comment to the appropriate state permitting agency is referred to as the "A" letter.
- c. Regional administrators are delegated authority under paragraph 1.b. to send letters to the appropriate state permitting agency, either sustaining or removing and outstanding federal objection. This letter either sustaining or removing an outstanding objection is referred to as the "B" letter. Concurrence by the Assistant Administrator for Water is required (1) on the first three "B" letters in a region sustaining an objection to the state's permit decision, thus transferring the permit to the Corps of Engineers, and (2) on the first three "B" letters allowing the state to issue a permit over the objections of the Corps of Engineers, U.S. Fish and Wildlife Service and/or National Marine Fisheries Service.
- d. For permits reviewed after the concurrences in 3.c above are complete, regions shall keep the director of the wetlands division informed about "A" letters and potential "B" letters in accordance with coordination procedures developed by the director and the regions.
- e. Regional administrators must obtain the concurrence of the Assistant Administrator for Water, the Assistant Administrator for Enforcement and Compliance Assurance or designee, and the General Counsel prior to approving state program submissions. Concurrence may be waived by memorandum; however, each waiver must be authorized by the Assistant Administrators for Water and Enforcement and Compliance Assurance and the General Counsel. The regional administrator is responsible for maintaining a record of any waivers of this limitation and sending a copy of the waiver to the management and organization division.
- f. Concurrence by the Assistant Administrator for Enforcement and Compliance Assurance or designee is only required when these permits involve enforcement issues.

Before exercising the authorities in 1.e., when the documents reviewed include a draft or final Environmental Impact Statement, Environmental Assessment or other draft or final document prepared by the U.S. Army Corps of Engineers pursuant to the National Environmental Policy Act, the concurrence of the Director, Office of Communities, Tribes and Environmental Assessment must be obtained.

2-43. Section 404 Dredged and Fill Material Permitting (continued)**4. REDELEGATION AUTHORITY.**

- a. The authority in paragraph 1.a that is delegated to the regional administrators, and the authorities in paragraphs 1.c and 1.d may be redelegated to the appropriate division director within each region and may not be redelegated further.
- b. The authority in paragraph 1.b to send the coordinated federal comment ("A" letter) to the state permitting agency may be redelegated to the appropriate section chief in each region and may not be redelegated further.
- c. The authority in paragraph 1.b to send the letter sustaining the outstanding federal objection ("B" letter) may not be redelegated; the authority to send the letter removing the outstanding federal objection ("B" letter) may be redelegated to the appropriate division director in each region and may not be redelegated further.
- d. The authorities in paragraph 1.e may be redelegated to the regional wetlands coordinator within each region and may not be redelegated further.
- e. The authority in paragraphs 1.f and 1.g may not be redelegated.
- f. The authority in paragraph 1.h is redelegated to the Director, Office of Wetlands, Oceans and Watersheds and may be redelegated to the regulatory activities division director within the Office of Wetlands, Oceans and Watersheds and may not be redelegated further.
- g. The authority in paragraph 1.i may be redelegated to the appropriate section chief within each region and may not be redelegated further.
- h. An official who redelegates an authority retains the right to exercise or withdraw the authority. Redelegated authority may be exercised by any official in the chain of command to the official to whom it has been specifically redelegated.

5. ADDITIONAL REFERENCES.

- a. 40 CFR Parts 230, 231.
- b. EPA Order 1000.23.
- c. Memorandum of Agreement between the Department of the Army and the Environmental Protection Agency concerning the determination of the geographic jurisdiction of the Section 404 program and the application of the exemptions under Section 404(f) of the Clean Water Act, dated January 19, 1989.
- d. Clean Water Act Section 404(q) Memorandum of Agreement between the Environmental Protection Agency and the Department of the Army, dated August 1992.

6. SUPERSESSSION. Delegations Manual, CWA, Regional Delegation 2-43. Dredged and Fill Material Permitting, 1200 TN III-396 (February 15, 2012).

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Cosmo Servidio
Regional Administrator